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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1965

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## No. 388

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JEANNE KING

*versus*

VICO INSURANCE COMPANY OF ST. LOUIS

---

***PETITION FOR WRIT OF CERTIORARI TO THE LOUISIANA SUPREME COURT.***

---

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IN THE

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**VICO INSURANCE COMPANY OF ST. LOUIS**

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## *PETITION FOR WRIT OF CERTIORARI TO THE LOUISIANA SUPREME COURT.*

---

*To the Chief Justice of the United States and the Justices of the Supreme Court of the United States:*

Petitioner respectfully prays that:

(a) A writ of certiorari issue to review the judgment of the Supreme Court of Louisiana entered on May 2, 1966, whereby petitioner's right and title to a money judgment, based on a jury verdict, of Three Thousand Five Hundred Seventy-Five and No/100 ($3575.00) Dollars, against named defendant, were confiscated and destroyed by state judicial officers acting in excess of their constitutional authority and in violation of petitioner's rights guaranteed by the Seventh and Fourth Amendments to the Constitution of the United States.

Petitioner, having incurred serious and disabling injuries as a result of the negligence of defendant's insured, tried her claim for damages to a jury. The jury, who by virtue of state law are the sole judges of the facts, returned a verdict for plaintiff in the sum of Three Thousand Five Hundred Seventy-Five and No/100 ($3575.00) Dollars, based on a fact finding of negligence hedged by unarguably proper instructions as to the law. Petitioner's right to this money judgment has been taken from her by the Court of Appeal of Louisiana, Fourth Circuit, solely as a result of that court having substituted its findings of fact for that of the jury, without having heard and seen the witnesses and thus without the benefit of demeanor evidence.

Petitioner's application for rehearing before said appellate court, in which she complained that the Court's action infringed her rights guaranteed by the Seventh and Fourteenth Amendments to the United States Constitution, perfunctorily was denied. Resort to Louisiana State Supreme Court for writ of review was equally without avail. Thus, Petitioner stands deprived of her property without due process.

## *OPINIONS BELOW*

1. Ignoring the findings of fact of the jury, the Court of Appeal of Louisiana, Fourth Circuit, on January 10, 1966, substituted its findings of fact for that of the jury, vacated petitioner's judgment against the defendant in the amount of Three Thousand Five Hundred Seventy-Five and No/100 ($3575.00) Dollars and dismissed her suit. Petitioner, being thus confronted by the denial of her constitutional right, in her application for rehearing timely filed urged upon that court that the re-examination by it of the jury's findings of fact was proscribed by the pro-

visions of the Seventh Amendment of the Constitution of the United States. Furthermore, petitioner urged, should it be held that the Seventh Amendment was not obligatory on the state, then the right to trial by jury, (especially once having been granted to petitioner by state law), the integrity of its verdict and the rights accruing to petitioner thereunder (which include the rights and privileges defined by the provisions of the Seventh Amendment) were inalienable rights implicit in the concept of ordered liberty and therefore secured to petitioner by the Fourteenth Amendment to the Constitution of the United States and thus the appellate court's decision, taking away petitioner's money judgment as it did, summarily without hearing the evidence, denied the petitioner of her property without due process and equal protection of the law. Petitioner's rehearing application was denied without the assignment of reasons. (*King v. VICO Insurance Company of St. Louis*, 182 So. (2d) 135. Opinion reproduced Appendix A, *infra*, pp. 13-20.

2. The Louisiana Supreme Court, to which petitioner applied for writ of certiorari or review in respect to the decision of the Court of Appeal of Louisiana, Fourth Circuit, on May 2, 1966, denied petitioner's application ruling as follows:

> "Writ refused. **On the facts found by the Court of Appeal,** there is no error of law in its judgment." (*King v. VICO Insurance Company of St. Louis*, ____ So. (2d) ____.)

## *JURISDICTION*

The jurisdiction of this Honorable Court is invoked under 28 U.S.C.A. 1257 (3).

## *QUESTIONS PRESENTED*

1. Is the Seventh Amendment to the United States Constitution obligatory on the states of the Union?

2. Is a citizen denied constitutional due process and equal protection in violation of the Fourteenth Amendment by the action of state judicial officers acting officially as a state appellate court in not only re-examining but in reversing the findings of fact by a jury, without recourse to new trial, where the state by legislative enactment has granted a citizen the right to trial by jury within the contemplation of the Seventh Amendment to the United States Constitution?

## *STATE STATUTE INVOLVED*

The state statute involved and which grants right to trial by jury is Louisiana Code of Civil Procedure, Articles 1731-1814, the text of which is fully reproduced herein as Appendix B, *infra*, pp. 21 to 29, and the organic law sanctioning the enactment of such legislation, namely, Louisiana Constitution, Article 7, Section 41, in part pertinent hereto provides:

> "The legislature **shall** provide for the election and drawing of competent and intelligent jurors for the trial of civil and criminal cases * * * ."

## *CONCISE STATEMENT OF THE CASE*

On April 6, 1964, petitioner was riding as a passenger in an automobile owned and operated by Linda Ray, defendant's insured.

That Linda Ray did, without warning apply her brakes causing petitioner's head to strike the windshield of the

automobile. As a result she sustained disabling permanent injuries, and medical expenses.

In due course she instituted a damage suit against VICO Insurance Company of St. Louis, the insurer of Linda Ray and prayed that this claim be tried to a jury. Jury trial was held on April 8, 1965, which resulted in a unanimous verdict in favor of petitioner.

On April 8, 1965, the trial judge entered judgment for petitioner in the amount of $3575.00, together with interest and costs.

Defendant appealed to the Louisiana Court of Appeal, Fourth Circuit, and on January 10, 1966, that Court supplanted the jury's findings of fact as to negligence with that of its own, vacated judgment in favor of petitioner and dismissed her lawsuit.

Thereafter petitioner timely filed application for rehearing in which petitioner contended that the action of the appellate court in re-examining and reversing the findings of fact as to negligence of the jury was proscribed by the Seventh and Fourteenth Amendments to the United States Constitution. Petitioner's application for rehearing was denied without the assignment of reasons. Thereafter petitioner timely applied for writ of certiorari or review to the Louisiana Supreme Court. That court on May 2, 1966, denied petitioner's application, noting that on the "facts" found by the "Court of Appeal", there was no error of law in its judgment. Thus the Louisiana Supreme Court has sanctioned the taking of petitioner's money judgment by the process of permitting an appellate court to substitute its findings of fact for that of the jury in the context of State law which institutes the jury as the sole judge of the facts.

## *REASONS FOR GRANTING RELIEF*

Ample evidence was presented to the jury which tried petitioner's case to support the jury's findings that defendant was guilty of negligence and that petitioner was free from fault. Thus, in the historical context of trial by jury, the jury verdict in favor of petitioner on the issue of negligence is conclusive if the evidence though disputed, contains probative facts sufficient to support it, however much the trial or appellate court may disagree with the jury's findings of fact. (*Basham v. Pennsylvania Railroad Company*, 83 S. Ct. 963 (1963); *Rogers v. Missouri Pacific Railroad Company*, 352 U.S. 500, 77 S. Ct. 443 (1957); *Lavender v. Kurn*, 327 U.S. 645, 66 S. Ct. 740 (1946).

The framers of the Louisiana Constitution gave a mandate to the Legislature of Louisiana to institute trial by jury. Louisiana Constitution, Article 7, Section 41, provides:

> "A Legislature **shall** provide for the election and drawing of competent and intelligent jurors for the trial of civil and criminal cases * * *."

Acting in pursuance of this constitutional mandate, the Legislature of Louisiana granted to all of its citizens the absolute right to trial by jury enacting the provisions of Louisiana Code of Civil Procedure, Articles 1731-1814. The Legislature instituted the jurors in civil cases as the sole judges of the facts and expressly prohibited the trial judge from either recapitulating or even commenting upon the evidence so as not to exercise "any influence upon their decision as to the facts." Louisiana Code of Civil Procedure, Article 1792. The trial court is without authority to alter or modify the verdict of the jury. Its sole remedy or authority is to grant a new trial. It may enter a remittitur or an additur but then only with the consent of the parties

and only as an alternative to the granting of a new trial. Louisiana Code of Civil Procedure, Article 1813.

Thus, the citizens of Louisiana have been granted the right to trial by jury in the common law tradition.

The grant of such a right to trial by jury carries with it the grant of the historical attributes of jury trial. Necessarily included among these historical attributes is the proscription of the Seventh Amendment against the re-examination of the findings of the jury by any court. This right, therefore, falls under the protective aegis of the Seventh Amendment, and, operating through the Fourteenth Amendment, its constraint is obligatory on the State of Louisiana. The State having granted petitioner the right to trial by jury, thus instituted trial by jury as a concomitant part of the legal process by which petitioner is entitled to have his rights adjudicated. Consequently, this right to trial by jury is an inalienable right implicit in the concept of ordered liberty and secured to petitioner by the Fourteenth Amendment to the United States Constitution.

A contrary view is logically and legally impermissible. For if the wisdom or judgment of the jury is supplanted by the critical judgment of disagreeing appellate court judges, then indeed there exists no legal creature such as trial by jury. In such a prospective, trial by jury is a figment of the imagination, the vagary of legal sophistry. Such a proposition mocks justice. It defies logic, decries tradition and denies petitioner of a legal birthright.

This court last year had occasion to adjudicate in the constitutional area involved in this application, the only exception being that the court was dealing with a jury verdict in a criminal case. *Turner v. State of Louisiana*, 379

U.S. 466, 85 S. Ct. 546. In commenting upon the constitutional standards and constraints that apply once a state has granted right to trial by jury, this court commented (85 S. Ct. at p. 549).

> "This case does not involve the question whether the Fourteenth Amendment requires a state to accord a jury trial to a defendant charged with murder. The question, rather, goes to the nature of the jury trial which the Fourteenth Amendment **commands when trial by jury is what the state has purported to accord.** * * *
>
> "The requirement that a jury's verdict 'must be based upon the evidence developed at the trial' goes to the **fundamental integrity** of all that is embraced in the constitutional concept of trial by jury. 'The jury is an essential instrumentality—an appendage —of the court, the body ordained to pass upon guilt or innocence. * * *'"

Similarly, the proscription against re-examining the findings of fact by the jury by any court is an inherent part of the fundamental integrity of all that is embraced in the constitutional concept of trial by jury. It goes to the very center of trial by jury. In fact it is the sine qua non of jury trial guaranteed to every citizen by the Seventh Amendment.

The action of the judges of the appellate court infringes petitioner's constitutional rights in another area. Admittedly, these judicial officers did not see and hear, the witnesses testify. Thus, they did not have the benefit of demeanor evidence, by which to gauge the credibility of the witnesses and determine the weight to be given to their testimony. But the right to present demeanor evidence is a constitutional right secured to citizens by the Fifth and Fourteenth Amendments to the United States Constitution.

*S. Buchsbaum and Company v. Federal Trade Commission*, 153 So. (2d) 85.

The United States Constitution is the supreme law of the land, binding alike upon states, courts and the people, anything in the constitution or laws of any state to the contrary notwithstanding. *Testa v. Katt*, 330 U.S. 386, 391, 67 S. Ct. 810, 813. The obligation to guard and enforce every right secured by that constitution rests upon the state courts equally with the federal courts. *Mooney v. Holohan*, 294 U.S. 103, 113, 55 S. Ct. 340, 342; *Smith v. O'Grady*, 312 U.S. 329, 331, 61 S. Ct. 572, 573.

The Louisiana Court of Appeal, Fourth Circuit, not only has failed to fulfill this inescapable obligation, but by its decision it has denied to petitioner his federally secured rights. The Louisiana Supreme Court has approved this denial. In fact the Louisiana Supreme Court has augmented or otherwise dramatized this denial. In approving of the judgment of the Court of Appeals it relied not on the facts found by the jury but on the "facts found by the Court of Appeal." Thus it gave greater credence to the fact findings of the Court of Appeal, the judges of which never saw or heard the witnesses, than it did to the fact findings of the jury, as to which the Seventh Amendment proscribes re-examination.

## *CONCLUSION*

The State of Louisiana has granted petitioner a plenary right of trial by jury. Thus the state has purported to accord petitioner the right to have her claims adjudicated by a jury as a concomitant part of available legal processes. The right not to have the jury findings re-examined by any court goes to the fundamental integrity of all that is embraced in the constitutional concept of trial

by jury. In re-examining these findings, the Louisiana Court of Appeal, Fourth Circuit, has denied petitioner of the right to trial by jury. Consequently, the action of this appellate court and of the Louisiana Supreme Court in thus denying petitioner of her right to trial by jury, violates the Seventh and Fourteenth Amendments of the United States Constitution. This action results in a denial to petitioner of her property without due process. She is without remedy other than that which may be secured to her by the grant of this application.

Respectfully submitted,

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## CERTIFICATE

STATE OF LOUISIANA
PARISH OF LAFAYETTE:

I, J. Minos Simon, counsel for petitioner and a member of the United States Supreme Court, hereby affirm under oath that a copy of the foregoing petition for writs of certiorari has been served on the parties hereto by mail, in a properly addressed envelope, postage prepaid as follows, to-wit:

Honorable Melvin J. Keenan, Clerk,
Louisiana Court of Appeals, Fourth Circuit
New Orleans, Louisiana.

Mr. Val. J. Courville, Clerk,
Louisiana Supreme Court,
New Orleans, Louisiana.

Porteous & Johnson,
Hibernia Building,
New Orleans, Louisiana.

---

J. MINOS SIMON

Sworn to and subscribed
before me this _____
day of July, 1966, at
Lafayette, Louisiana.

---

Notary Public

***APPENDIX A***

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Jan 10 1966

COURT OF APPEAL
FOURTH CIRCUIT — STATE OF LOUISIANA

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No. 1998

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JEANNE KING
VS.
VICO INSURANCE COMPANY
OF ST. LOUIS

---

APPEAL FROM THE CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS, No. 427-467, DIVISION "F", HONORABLE ALEXANDER E. RAINOLD, JUDGE.

---

GEORGE JANVIER
JUDGE

---

(Court composed of Judges Louis H. Yarrut, Paul E. Chasez and George Janvier)

HATTIER, SCHROEDER & KUNTZ, HERMAN M. SCHROEDER, for plaintiff-appellee.

PORTEOUS & JOHNSON, WILLIAM A. PORTEOUS, JR., for defendant-appellant.

REVERSED.

Plaintiff, a guest passenger in a Volkswagen automobile of her friend, Linda Ray, sustained injuries when, as a result of the sudden stopping of the car by Miss Ray, her head struck the windshield, and, in addition to the slight bruise on her forehead, she sustained a "cervical spinal sprain."

Miss Ray had secured a policy of liability insurance from Vico Insurance Company of St. Louis, and Miss Jeanne King, plaintiff, by direct action, brought this suit against the said insurer, alleging that the accident had been caused by fault on the part of Miss Ray in unnecessarily and without warning bringing her car to a sudden stop. She prayed for judgment for $36,732.02 and for trial by jury. Miss Ray was not made defendant.

The defendant answered, denying negligence on the part of Miss Ray and averring "that a dog ran out into the street in front of the vehicle," and that Miss Ray, "acting in a sudden emergency not of her own creation * * *, applied her brakes to avoid hitting the dog." The said insurer then alleged that the dog had belonged to Douglas Allen, and that the said Allen had negligently, and, in violation of a city ordinance, permitted it to run at large and that, therefore, should it, the insurer, be held liable to plaintiff, there should be judgment in its favor against said Allen for such amount as might be awarded plaintiff. Allen could not be located and there was no service on him. Accordingly, the matter went to trial between plaintiff and the insurer of Miss Ray, and there was a unanimous verdict on which there was judgment in favor of Miss Ray in the sum of $3375. There was also the award of an expert's fee of $150.

Defendant insurer has appealed, and contends that not only should the judgment be reversed, but that should it be

found that there is liability, the amount of the judgment should be reduced.

The policy of insurance included medical payments coverage under which the insurer had agreed to pay the medical expenses of anyone who might be injured as the result of the operation of the car regardless of whether or not there was negligence on the part of the driver. Accordingly, it is conceded that, under this provision of the policy, the medical expenses of plaintiff, amounting to $762, were paid by the insurer.

So far as the facts are concerned, there is no evidence which, except in minor particulars, tends to contradict the story of the accident as related by Miss Ray, the operator of the car.

With the plaintiff alongside her, she was driving in a downtown direction on Carondelet Street, which is a one-way street, in the direction in which she was operating the car. As she neared the corner of Philip Street, there were vehicles parked on both sides leaving only a narrow roadway open between them. She brought her car to a stop behind another car which had stopped before turning to its right into Philip Street. While both vehicles were stopped, a dog "walked out in the street." Miss Ray says that the dog "went back and I thought he was gone." She then started forward—she says, in low gear and at a speed of about five miles an hour and "had gotten about even with the corner" when the dog "ran out in front of me." She says that after she first saw the dog and it "walked back to the sidewalk," she "didn't see him any more until he ran out in front of me."

Plaintiff says that at that time she was not looking forward and did not see the dog until later because she

"had her head down * * *." She says that she had her purse in her lap and that she "was looking to get a cigarette out of my purse." When she did look up she says the dog, which, according to her, "was sort of a large dog," was "either by the side of the street or on the curb."

Only on two rather unimportant points is there disagreement between Miss King and Miss Ray. Miss Ray says that before starting on the trip downtown, plaintiff had had one "Scotch and water" to drink, but she herself had not taken a drink. Plaintiff says that she had had a drink and that Miss Ray had had one also. There was no effort to show that liquor had had any effect on either.

On one other point the two ladies are not in complete agreement. Miss Ray says that she had stopped her car behind the other vehicle and had then started it when the dog ran into the street, and Miss King at first said that there had been no intervening stop, but later said: "I don't remember if we did."

We repeat that there is nothing whatever which tends to contradict the story of Miss Ray, the driver of the car. The record leaves no doubt at all that she had stopped behind the other vehicle; that she had seen the dog walk out into the street and then go back to the sidewalk, "I think, towards Philip Street."

Accordingly, we feel that in bringing her car to a stop Miss Ray instinctively did exactly what other normal persons in the full possession of their faculties would have done. She brought her car to a sudden and immediate stop. She had no time to consider whether it was best to strike the dog and run the risk of a more serious accident, or to bring the car to a sudden stop.

Here and elsewhere there is abundant authority to the effect that it is not actionable negligence to bring a car to a sudden stop in an emergency not created by the driver where there is an occurrence which may cause serious accident and where the reaction of the driver must take place before there is time to consider the possible result of the sudden stop, and where the driver does what any ordinarily careful driver would have done and does not increase the peril by acting in an abnormal way.

In *Dean v. Travelers Insurance Company*, 171 So. 2d 708, we recognized this principle and held that where a sudden emergency arises, the driver "is not to be held to the same high standard as one who is able to survey the alternative courses of action in a calm and unhurried atmosphere."

It is true that in that case we held the driver of the car at fault for the reason that she did not react as a normal person should have reacted. It appeared that when a child ran out from the left side of the road, the driver of the car, instead of merely trying to stop, released the steering wheel which permitted the car to go "across the road into a ditch and over a culvert, a driveway and up out of the ditch and into a utility pole."

Referring again to the view that the reaction in an emergency should be the normal reaction of an ordinarily careful person, we said that while the "emotional reaction" of the driver of the car which caused her to lose completely the control of the automobile might have been the normal reaction of that particular driver, it was not the reaction "to be expected of a person of reasonable self-control."

We find the question of normal reaction in the case of sudden emergency has been discussed many times. In

*Burhans v. Burhans*, 159 Md. 370, 150 Atl. 795, the driver of a car saw a large dog coming from a side road onto the road on which she was driving. She applied her brakes and attempted to avoid striking the dog. The car skidded, turned around, hit a culvert and turned over. The Court said that there was nothing to show that the driver was negligent in attempting to avoid a collision with the dog and added "nor is it shown, we think, that she did anything in her attempt to avoid a collision with the dog that an ordinarily prudent person would not have done when placed in such perilous situation."

In *Olson v. Hermansen*, 196 Wis. 614, 220 N.W. 203, 61 A.L.R. 1243, two dogs jumped from behind a car in front of the driver's car, and, in attempting to avoid the dogs, the car turned over and death resulted. The Court, referring to the driver, said: " * * * the conduct of the dogs clearly created an emergency, in which she acted in good faith and in accordance with her best degree of skill."

In a New York case, *Sills v. Meyers*, 171 Misc. 63, 11 N.Y.S. 2d 106, the driver of a car saw a cat crossing the highway, and, in attempting to avoid it, brought the car to a sudden stop. In that case the Court held the driver was at fault; but said that the cat in front of the car "was not an emergency" but that "if, of course, a person or a large animal, or a large object, was in the road which if collided with would have caused injury * * *, it would be an emergency * * * ."

In *Pickett v. Travelers Ins. Company*, 127 So. 2d 547, appears the following:

> "The evidence in this case establishes without contradiction that plaintiff's bull suddenly darted on the highway in front of the insured vehicle, and that the driver of that car then veered to his left

> and applied his brakes forcefully in an unsuccessful attempt to avoid striking the animal. We think the driver exercised reasonable care in attempting to avoid the accident, and that under the circumstances presented here he was not guilty of actionable negligence in electing to strike the animal rather than to drive off the highway and down the enbankment which bordered it."

It is true that in the *Pickett* case Judge Tate dissented, but he did so for the reason that he did not feel that the evidence had sustained the contention that the accident had happened as a result of the "sudden jump into his (driver) path of the bull * * *." And, in fact, Judge Tate later, in *Huval v. Burke*, 160 So. 2d 810, cited with approval the *Pickett* case.

We conclude, then, that unless the reaction of Miss Ray was abnormal and was not the reaction of a reasonably prudent careful driver, she was not at fault in bringing her car to a stop. But it is contended that she must have been operating the car at too great a speed and that this was the cause of the injuries which would not have been sustained except for that speed.

Miss Ray said that her speed was not more than five miles an hour; that the car was in low gear, and that she had just started it, and the only evidence which is pointed to as indicating unnecessarily high speed is the statement of Miss King herself that when her head struck the windshield, the windshield "was not broken out or anything like that, but all cracked, you know as you all described, I think, a spider web effect or something." This in itself does not indicate unduly high speed. In leaning forward to look into her bag, Miss King's head was nearer to the windshield than it otherwise would have been, especially as the

car was a very small one in which the occupants were closer to the windshield than they would have been in a larger car. The striking of the windshield could not have been violent as at first Miss King did not think that she had been injured. She said: "I didn't think I was hurt at all." It was not until later in the day when, in spite of the accident, she kept an appointment at the beauty parlor, that the operator there noticed that she "had a little lump on my head."

We are convinced that Miss Ray operated her car in a normal way, was not running it at an abnormal speed, and did nothing to increase the danger after the emergency became apparent.

The judgment appealed from is annulled, avoided and reversed, and plaintiff's suit is dismissed at her cost.

REVERSED.

## *APPENDIX B*

### LOUISIANA CODE OF CIVIL PROCEDURE ARTICLES 1731-1814

Article 1731 Issues triable by jury.

Except as limited by Article 1733, the right to trial by jury is recognized.

The nature and amount of the principal demand shall determine whether any issue in the principal or incidental demand is triable by jury.

Article 1732 Demand for jury trial.

A party may demand a trial by jury of any issue triable of right by a jury in a pleading filed not later than ten days after the service of the last pleading directed to such issue.

Article 1733 Limitation upon jury trials.

A trial by jury shall not be available in:

(1) A suit demanding less than one thousand dollars exclusive of interest and costs;

(2) A suit on an unconditional obligation to pay a specific sum of money; unless the defense thereto is forgery, fraud; error, want or failure of consideration;

(3) A summary, executory, probate, partition, mandamus, habeas corpus, quo warranto, injunction, concursus, workmen's compensation, emancipation, tutorship, interdiction, curatorship, legitimacy, filiation, separation from

bed and board, annulment of marriage, or divorce proceeding;

(4) A proceeding to review an action by an administrative or municipal body; and

(5) All cases where a jury trial is specifically denied by law.

Article 1734 Specification of issues.

In his demand a party may specify the issues which he wishes to be tried by jury; otherwise he shall be considered to have demanded trial by jury for all the issues so triable. If he has demanded trial by jury for only some of the issues, any other party, within ten days after service of the demand or such lesser time as the court may order, may demand trial by jury of any or all of the other issues in the action.

Article 1735 Trial of less than all issues; stipulation.

The trial of all issues for which jury trial has been requested shall be by jury unless the parties stipulate that the jury trial shall be as to certain issues only, or unless the right to trial by jury as to certain issues does not exist, but in all cases there shall be but one trial.

SECTION 2. SELECTION OF JURY

Article 1751 Qualification and exemptions of jurors.

The qualification and exemptions of jurors and the method of choosing and summoning the general venire in jury cases are provided by special laws.

## SECTION 3. PROCEDURE FOR CALLING AND EXAMINING JURORS

### Article 1761 Procedure in general

In cases to be tried by jury, twelve jurors summoned in accordance with law shall be chosen by lot to try the case. The method of calling and drawing by lot shall be at the discretion of the court. The parties may stipulate for a lesser number of jurors to try the case; or that if one or more of the jurors dies or becomes disqualified the remaining jurors shall try the case.

### Article 1762 Swearing of juror before examination.

Every prospective juror, before being examined, shall be sworn to answer truthfully such questions as may be propounded to him.

### Article 1763 Examination of juror.

The court shall permit the parties or their attorneys to conduct the examination of a prospective juror and may itself conduct an examination, which shall be limited to ascertaining the qualifications of the juror.

### Article 1764 Peremptory challenges.

Each side is allowed six peremptory challenges. If there is more than one party on any side, the court may allow each side additional peremptory challenges, not to exceed four. Each side shall be allowed an equal number of peremptory challenges. If the parties on a side are unable to agree upon the allocation of peremptory challenges among themselves, the allocation shall be determined by the court before the examination on the voir dire.

Article 1765 Challenges for cause.

A juror may be challenged for cause based upon any of the following:

(1) When the juror lacks a qualification required by law;

(2) When the juror has formed an opinion in the case or is not otherwise impartial, the cause of his bias being immaterial;

(3) When the relations whether by blood, marriage, employment, friendship, or enmity between the juror and any party or his attorney are such that it must be reasonably believed that they would influence the juror in coming to a verdict;

(4) When the juror served on a previous jury, which tried the same case or one arising out of the same facts;

(5) When the juror refuses to answer a question on the voir dire examination on the ground that his answer might tend to incriminate him.

Article 1766 Time for peremptory challenge.

After the entire jury has been accepted and sworn, no party has the right to challenge peremptorily.

Article 1767 Challenging or excusing jurors after acceptance.

Although the entire jury may have been accepted and sworn, up to the beginning of the taking of evidence, a juror may be challenged for cause by either side or be ex-

cused either for cause or by consent of both sides, and the panel completed in the ordinary course.

Article 1768 Swearing of jurors; selection of foreman.

When the jury has been accepted by all parties, the jurors shall be sworn to try the case in a just and impartial manner, to the best of their judgment, and to render a verdict according to the law and the evidence. When the jury has retired, the jurors shall select a foreman to preside over them and sign the verdict which they may render.

Article 1769 Alternate jurors.

The court may direct that one or two jurors in addition to the regular panel be called and empanelled to sit as alternate jurors. Alternate jurors, in the order in which they are called, shall replace jurors who, prior to the time the jury retires to consider its verdict, become unable or disqualified to perform their duties. Alternate jurors shall be drawn in the same manner, shall have the same qualifications, shall be subject to the same examination and challenges, shall take the same oath, and shall have the same functions, powers, facilities, and privileges as the principal jurors. An alternate juror who does not replace a principal juror shall be discharged when the jury retires to consider its verdict. If one or two alternate jurors are called, each side shall have an equal number of peremptory challenges. The court shall determine how many challenges shall be allowed and shall allocate them among the parties on each side. The additional peremptory challenges may be used only against an alternate juror, and the other peremptory challenges allowed by law shall not be used against the alternate jurors.

## SECTION 4. PROCEDURE IN JURY TRIALS

**Article 1791 Time for charging the jury; recordation of charge.**

After the trial of the case and the presentation of all the evidence and arguments, the court shall charge the jury in accordance with law. This charge shall be in writing or recorded in the same manner as testimony taken in the case.

**Article 1792 Contents of charge to jury.**

In his charge to the jury the judge shall instruct the jurors on the law applicable to the cause submitted to them, but he shall not recapitulate or comment upon the evidence so as to exercise any influence upon their decision as to the facts.

**Article 1793 Instruction to jury; objections.**

At the close of the evidence or at an earlier time during the trial as the court reasonably directs, a party may file written requests that the court instruct the jury on the law as set forth in the requests. The court shall inform counsel of its proposed action upon the requests prior to their arguments to the jury.

A party may not assign as error the giving or the failure to give an instruction unless he objects thereto before the jury retires to consider its verdict, stating specifically the matter to which he objects and the grounds of his objection. Opportunity shall be given to make the objection out of the hearing of the jury.

**Article 1794 Taking evidence to jury room.**

In reaching a verdict the jurors must rely upon their

memories, and, when they retire from the jury room to deliberate, they shall not be allowed access to any written evidence or to any notes of the testimony of any witness, but they may take with them any object or document received in evidence which requires a physical examination to enable them to arrive at a just conclusion.

Article 1795 Number required for verdict; stipulation.

In order to render any verdict, nine of the jurors must concur therein. The parties may stipulate, however, that the concurrence of a stated majority of the jurors shall be sufficient for a verdict, and must do so when they have stipulated for a trial by a lesser number in accordance with Article 1761.

SECTION 5. VERDICTS

Article 1811 Special verdicts.

The court may require a jury to return only a special verdict in the form of a special written finding upon each issue of fact. In that event the court may submit to the jury written questions susceptible of categorical or other brief answer, or may submit written forms of the several special findings which might properly be made under the pleadings and evidence, or may use any other appropriate method of submitting the issues and requiring the written findings thereon. The Court shall give to the jury such explanation and instruction concerning the matter submitted as may be necessary to enable the jury to make its findings upon each issue. If the court omits any issue of fact raised by the pleadings or by the evidence, each party waives his right to a trial by jury of the issue omitted unless, before the jury retires, he demands its submission to the jury. As to an issue omitted without such demand the court may make a finding; or, if it fails to do so, it shall

be presumed to have made a finding in accord with the judgment on the special verdict.

Article 1812 General verdict accompanied by answer to interrogatories.

The court may submit to the jury, with appropriate forms for a general verdict, written interrogatories upon one or more issues of fact the decision of which is necessary to a verdict. The court shall give such explanation or instruction as may be necessary to enable the jury both to make answers to the interrogatories and to render a general verdict, and the court shall direct the jury both to make written answers and to render a general verdict.

When the general verdict and the answers are harmonious, the court shall direct the entry of the appropriate judgment upon the verdict and answers.

When the answers are consistent with each other but one or more is inconsistent with the general verdict, the court may direct the entry of judgment in accordance with the answers, notwithstanding the general verdict, or may return the jury for further consideration of its answers and verdict, or may order a new trial.

When the answers are inconsistent with each other and one or more is likewise consistent with the general verdict, the court shall not direct the entry of judgment but may return the jury for further consideration of its answers or may order a new trial.

Article 1813 Remittitur or additur as alternative to new trial; reformation of verdict.

If the trial court is of the opinion that the verdict is so excessive or inadequate that a new trial should be

granted for that reason only, it may indicate to the party or his attorney within what time he may enter a remittitur or additur. This remittitur or additur is to be entered only with the consent of the plaintiff or the defendant as the case may be, as an alternative to a new trial, and is to be entered only if the amount of the excess or inadequacy of the verdict or judgment can be separately and fairly ascertained. If a remittitur or additur is entered, then the court shall reform the jury verdict or judgment in accordance therewith.

Article 1814 New trial on showing of misconduct by jury.

A new trial shall be granted if it be proved that the jury was bribed or has behaved improperly so that impartial justice has not been done.